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No. 405.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

**THE NORTH BLOOMFIELD GRAVEL
MINING COMPANY, a Corporation,**
Appellant,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

TRANSCRIPT OF RECORD.

Upon Appeal from the United States Circuit Court of
the Ninth Judicial Circuit, in and for the
Northern District of California.

FILED
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Record of Circuit
Court of Appeals

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*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

THE UNITED STATES,	Complainant,	} Bill in Equity.
vs.		
THE NORTH BLOOMFIELD GRAVEL		
MINING COMPANY (a Corporation),		
and L. L. MEYER, its Superintend-		
ent,*		
Respondent.		

Bill of Complaint.

The United States of America, by Judson Harmon, Attorney General of the United States, brings this bill against the North Bloomfield Gravel Mining Company, a corporation, and L. L. Meyer, its superintendent,* and thereupon your orator complains and says:

I.

That heretofore, and under and by virtue of an act of Congress entitled, "An Act to create the California Debris Commission, and regulate hydraulic mining in the State of California," approved March 1, 1893, the President of the United States, by and with the advice of the Senate thereof, duly appointed from officers of the corps

*Amended. W. B. B., Dep. Clerk.

of engineers of the United States army, Colonel George H. Mendell, Lieutenant-Colonel W. H. H. Benyaurd, and Major W. H. Heuer, as a commission to be, and be known as, such "California Debris Commission," heretofore provided for as aforesaid; that said officers did immediately thereafter duly qualify and enter upon their duty as members of such commission; that their said appointments have not been revoked, but have ever since been, and now are, in full force and effect, and the said Colonel George H. Mendell, Lieutenant-Colonel W. H. H. Benyaurd, and Major W. H. Heuer have been and constitute, since said appointments, and now are and constitute, the duly appointed, qualified, and acting California Debris Commission; that said Commission, within thirty days after such appointments, duly organized, by the selection of such officers from the members thereof as were required in the performance of its duties, and by the adoption of rules and regulations and the prescription of a method of procedure to govern its deliberations and the conduct of its work, under the provisions of said act; and thereupon the said commission became and was, and now is, invested with jurisdiction over all mining carried on by the hydraulic process, as the same is hereinafter defined, in the territory drained by the Sacramento and San Joaquin river systems in said State and Northern District of California.

II.

That the said North Bloomfield Gravel Mining Company is, and at all the times herein mentioned was, a cor-

poration duly organized and existing under and by virtue of the laws of said State of California, for the purpose of mining for gold, having its principal place of business at the city and county of San Francisco, and its works, gold mines, and mining grounds, owned, possessed, and operated by it, as hereinafter mentioned, at and near the town of North Bloomfield, in Nevada county, all in said State and Northern District of California; and that the said L. L. Meyer is the superintendent of said works, gold mines, and mining claims of said respondent company.*

III.

That the said works, gold mines, and mining grounds possessed, owned, and operated by said respondent, the North Bloomfield Gravel Mining Company, are so mined and operated by the hydraulic process of mining, and none other, as hereinafter defined; and are, and each and every part thereof, is situated on and near the Yuba river and its different forks and tributary branches and streams, and are, and each and every part of said works, gold mines, and mining claims, is situated in and is a portion of the said territory drained by the Sacramento and San Joaquin river systems in said State and Northern District of California.

IV.

That the waters of the Sacramento river flow into Suisun bay, and from thence through the straits of Carquinez into San Pablo bay, and from thence through the

*Amended. W. B. B., Dep. Clerk.

Golden Gate into the Pacific Ocean; that Feather river flows into said Sacramento river, and that Yuba river flows into said Feather river; that said rivers, bays, and straits are wholly within said Northern District of California; that the said Sacramento, Feather, and Yuba rivers were at the time of the cession of the territory of Upper California to the United States by the Republic of Mexico, to-wit, on the 2d day of February, 1848, ever since have been, and now are, public navigable rivers, and free highways for the uses and purposes of commerce and navigation, and during all that time were, and still are, navigated and navigable, as hereinafter stated, by steamboats and other vessels engaged in commerce and navigation within said State, and drawing from eight to sixteen feet of water.

That the said Sacramento river, during all the time aforesaid, was, and still is, so navigable, and navigated by steamboats and other vessels between its mouth and the mouth of Middle creek, in Shasta county, above the point of confluence of said Sacramento and Feather rivers.

That said Feather river, during all said time, was, and still is, so navigable between its mouth and the mouth of said Yuba river.

That said Yuba river, during all said time, was, and still is, so navigable from its mouth to a point about one mile above its mouth.

That all of said rivers have their principal sources in the western slope of the Sierra Nevada Mountains, which lie to the east and the northeast of the Sacramento valley, through which the Sacramento river flows, and in a

small part in the eastern slope of the Coast Range Mountains, which lie to the west of said valley; that all the waters of said western slope of said Sierra Nevada Mountains which lies opposite to said Sacramento valley are tributary to said rivers; that they have their sources in lakes, springs, small streams, and canyons, which receive their waters from the rain and snow which fall each year to a great depth upon said mountains.

That the said North Bloomfield Gravel Mining Company so dumps and discharges the mining debris from said works, gold mines, and mining grounds in such manner that the same, or a portion thereof, is ultimately carried and flows into the said Yuba river, its said forks and streams, and, with the mining debris from other works, gold mines, and mining grounds so operated by the hydraulic process of mining, as hereinafter defined, is thence so carried and flows into the said Feather, Sacramento and other rivers and streams forming a part of and tributary to said Sacramento river system, and thence into the other waters, bays, and straits hereinbefore mentioned.

V.

That hydraulic mining, as it is now, and for more than twenty years last past has been, conducted, practiced, and understood in said State, is a process or mode of gold mining, by which hills, ridges, banks, and other forms of deposits of earth, which contain gold, and are known as gold mines, are mined and removed from their position

by means of large streams of water, which by great pressure are forced through pipes terminating in nozzles, generally known as monitors or little giants; that the water is discharged from such nozzles with great force by a water pressure of from fifty to four hundred feet per second, against and upon such hills, ridges, banks, and other deposits, which are usually or frequently shattered or broken up by means of blasts of powder, and softened by running water over and along such shattered and broken banks of earth, and undermined by streams of water flowing at the foot of such banks, thus caving down and washing off portions of such banks, before water is discharged from said nozzles against such banks, as aforesaid; that the clay, sand, gravel, stones, rocks, and boulders of which such gold mines are composed, and which are known as, and in this bill are denominated, mining debris, together with the gold contained therein, are carried and moved by said streams, or by streams of water which are caused to flow over said banks without pressure, into and through flumes, sluices, and other conduits, at or adjacent to the respective works, mines, and mining claims.

That the gold contained in or mingled with such mining debris is arrested in such flumes, sluices, conduits, or other appliances for saving the gold, and the mining debris is carried and propelled by such streams of water through the said flumes, sluices, and conduits, and dumped or discharged into impounding basins and reservoirs, and a part of said mining debris is thence carried and flows into the adjacent streams or canyons, or some

places near to them, from which it is carried and moved by the water into such streams or canyons.

That the larger and heavier portions of said mining debris are deposited and lodged in said basins impounding reservoirs, or works, and the smaller and lighter portions thereof, being not less than fifty per cent of said mining debris, carried down said streams and lodged and deposited in said rivers, their channels and the lands adjacent thereto.

That a portion of such mining debris, ever since the commencement of hydraulic mining, as aforesaid, at and adjacent to the streams and canyons aforesaid, has, during a large part of each year, been deposited and lodged, and is still being deposited and lodged in the beds and channels of said rivers, and will continue to be so deposited and lodged while such hydraulic mining continues.

VI.

That the said North Bloomfield Gravel Mining Company and said L. L. Meyer, its superintendent, and each thereof,* has at all of said times failed, neglected, and refused, and now does utterly fail, neglect, and refuse, to file with said California Debris Commission a verified, or any petition, setting forth such facts as will comply with the said act, and the rules prescribed by said commission, or either or at all, as in and by said act, in section 9 thereof, is provided, and has [have*] not, nor has either thereof,* nor has anyone on its [their or either of their*] behalf, executed and acknowledged a deed or oth-

*Amended. W. B. B., Dep. Clerk.

er instrument, whereby the said North Bloomfield Gravel Mining Company surrenders to said United States the right or privilege to regulate by law the manner or method in which the debris, or a portion thereof, resulting from the working or operation of said works, gold mines, or mining grounds, by said process, shall be restrained or what amount shall be produced therefrom; although the said North Bloomfield Gravel Mining Company [and L. L. Meyer, its superintendent have*] has been at said ^{times} times, and now is [are], engaged in mining by the said hydraulic process at said works, gold mines, and mining grounds, as aforesaid.

Wherefore, your orator prays that a writ of injunction may issue out of and under the seal of this honorable Court, directed to these respondent, and each thereof,* perpetually enjoining and restraining it, its [their, and each of them, their*] agents, grantees, lessees, and employees, from continuing to operate, and from operating or suffering or allowing to be operated, by the said hydraulic process, its said works, mines, and mining grounds, until it [they*], the said respondent, or either thereof, in behalf of both* shall make, present, and file with said California Debris Commission, its [their*] said verified petition, setting forth such facts as will comply with said law and the rules prescribed by said California Debris Commission, accompanied by said deed or instrument, duly executed and acknowledged, as required by the law of said State of California, whereby the said North Bloomfield Gravel Mining Company, as aforesaid, surrenders to

*Amended. W. B. B., Dep. Clerk.

the said United States the right and privilege to regulate by law, as provided in said act, or any law that may be hereafter enacted, or by such rules and regulations as may be prescribed by virtue thereof, the manner and method in which the said debris, resulting from the working and operation by the said hydraulic process of said mines and mining claims, shall be restrained, and what amount shall be produced therefrom; and that your orator may have such other or further relief in the premises as to the Court may seem meet.

And may it please the Court to grant unto your orator a writ of subpoena, issuing out of and under the seal of this Honorable Court, directed to each* of said respondent, commanding it [them and each of them*], on a day certain therein to be named, and under a certain penalty, to be and appear in this Honorable Court, then and there to answer, under oath, all and singular the premises, and to stand and to perform and abide such order, direction, and decree as may be made against it [them, or either of them*], and your orator in duty bound will ever pray.

JUDSON HARMON,
Attorney General.

H. S. FOOTE,
United States Attorney.

SAMUEL KNIGHT,
Asst. United States Attorney, Solicitors for Complainant.

[Endorsed]: Bill. Filed June 19th, 1895. W. J. Costigan, Clerk.

*Amended. W. B. B., Dep. Clerk.

UNITED STATES OF AMERICA

*Circuit Court of the United States, Ninth Judicial Circuit,
Northern District of California.*

IN EQUITY.

Subpoena ad Respondendum.

The President of the United States of America, Greeting,
to the North Bloomfield Gravel Mining Company, a
Corporation, and L. L. Meyer, its Superintendent:

You are hereby commanded, that you be and appear in
said Circuit Court of the United States aforesaid, at the
courtroom in San Francisco, on the fifth day of August, A.
D. 1895, to answer a bill of complaint exhibited against
you in said court by the United States of America, and to
do and receive what the said Court shall have considered
in that behalf, and this you are not to omit, under the pen-
alty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER,
Chief Justice of the United States, this 19th day of June,
in the year of our Lord one thousand eight hundred and
ninety-five, and of our Independence the 119th.

[Seal]

W. J. COSTIGAN,

Clerk.

By W. B. Beazley,

Deputy Clerk.

Memorandum Pursuant to Rule 12, Rules of Practice for the Courts of Equity of the United States.—You are hereby required to enter your appearance in the above suit, on or before the first Monday of August next, at the clerk's office of said Court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

W. J. COSTIGAN,
Clerk.

By W. B. Beaizley,
Deputy Clerk.

[Endorsed]:

United States Marshal's Office, }
Northern District of California. }

I hereby certify that I received the within writ on the 17th day of June, 1895, and personally served the same on the North Bloomfield Gravel Mining Company, a corporation, on the 20th day of June, 1895, by delivering to and leaving with Henry Pichoir, secretary of the said North Bloomfield Gravel Mining Company, a corporation, said defendant named therein, at the city and county of San Francisco, in said district, an attested copy thereof.

San Francisco, June 24, 1895.

BARRY BALDWIN,
U. S. Marshal.
By J. A. Littlefield,
Deputy.

I further certify that I served the same upon L. L. Meyer, its superintendent, by delivering to and leaving with T. L. Ford, Esq., attorney for said L. L. Meyer, its superintendent (as per instructions from United States attorney), an attested copy thereof.

BARRY BALDWIN,
U. S. Marshal.
J. A. Littlefield,
Deputy.

[Endorsed]: Subpoena ad respondendum. Filed July 9th, 1895. W. J. Costigan, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
in and for the Northern District of California.*

IN EQUITY.

THE UNITED STATES OF AMERICA,
Complainant,
vs.

THE NORTH BLOOMFIELD GRAVEL
MINING COMPANY (a Corporation),
and L. L. MEYERS, Its Superintend-
ent,

Defendants.

No. 12,086.

Demurrer of the North Bloomfield Gravel Mining Company.

The demurrer of the North Bloomfield Gravel Mining Company, a defendant in the above-entitled cause, to the bill of complaint of the United States of America, the above-named plaintiff.

This defendant, the North Bloomfield Gravel Mining Company, a corporation, by protestation, not confessing all or any of the matters and things in the plaintiff's amended bill of complaint contained to be true, in such manner and form as the same is therein set forth and alleged, doth demur to the said bill, and for cause of demurrer showeth:

I.

That plaintiff hath not, in and by its said bill, made or stated such a cause as entitles it, in a court of equity, to any discovery from this defendant, or to any relief against it, as to the matters contained in said bill, or any of such matters.

II.

That defendant L. L. Meyers, the superintendent of said corporation, is in said bill of complaint improperly joined as defendant with said North Bloomfield Gravel Mining Company, in this, to-wit, that said L. L. Meyers is joined as a party defendant with the said North Bloomfield Grav-

el Mining Company in said bill of complaint, solely as and because he is superintendent of said North Bloomfield Gravel Mining Company, and that said L. L. Meyers is not a proper or necessary party to said suit, or to any relief sought in or by said bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the said defendant, the North Bloomfield Gravel Mining Company, doth demur thereto, and humbly demands the judgment of this Court whether it shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with its costs and charges, in this behalf most wrongfully sustained.

CROSS, FORD, KELLY & ABBOTT,

Solicitors for the Defendant, the North Bloomfield Gravel Mining Company.

State of California, }
 City and County of San Francisco. } ss.

Henry Pichoir, being first duly sworn according to law, deposes and says that he is the secretary of the North Bloomfield Gravel Mining Company, the above-named defendant; that the foregoing demurrer is not interposed for delay.

H. PICHOR.

Subscribed and sworn to before me this 3d day of August, A. D. 1895.

[Seal]

JAMES MASON,
 Notary Public.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

CROSS, FORD, KELLY & ABBOTT,
Solicitors for Respondent, the North Bloomfield Gravel
Mining Company.

[Endorsed]: Demurrer of North Bloomfield Gravel Mining Co. Filed August 3, 1895. W. J. Costigan, Clerk. By W. B. Beazley, Dep. Clk.

*In the United States Circuit Court, Northern District of
California.*

UNITED STATES OF AMERICA,	}
Complainant,	
vs.	}
THE NORTH BLOOMFIELD GRAVEL	
MINING COMPANY and L. L. MEY-	
ER,	
Defendants.	

Motion of L. L. Meyers to Strike Out, etc.

Now comes the said defendant L. L. Meyer, and moves the Court to strike the said defendant from the bill of complaint in said cause, on the ground that the said Meyer is not a necessary or proper party to said suit.

CROSS, FORD, KELLY & ABBOTT,
Solicitors for said Defendant, L. L. Meyer.

[Endorsed]: Motion of L. L. Meyer to strike him from the bill of complaint. Filed August 3d 1895. W. J. Costigan, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit, in
and for the Northern District of California.*

IN EQUITY.

UNITED STATES OF AMERICA,	} No. 12,086.
Complainant,	
vs.	
THE NORTH BLOOMFIELD GRAVEL MINING COMPANY (a Corporation), and L. L. MEYERS, Its Superintend- ent,	
Defendants.	

Demurrer of L. L. Meyers.

The demurrer of L. L. Meyers, a defendant in the above-entitled cause, to the bill of complaint of the United States of America, the above-named plaintiff.

This defendant L. L. Meyers, by protestation, not confessing all or any of the matters and things in the plaintiff's amended bill of complaint contained to be true, in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth:

I.

That plaintiff hath not, in and by its said bill, made or stated such a cause as entitles it, in a court of equity, to

any discovery from this defendant, or to any relief against him, as to the matters contained in said bill, or any of such matters.

II.

That defendant L. L. Meyers, the superintendent of said corporation, is in said bill of complaint improperly joined as defendant with said North Bloomfield Gravel Mining Company, in this, to-wit, that said L. L. Meyer is joined as a party defendant with the said North Bloomfield Gravel Mining Company in said bill of complaint, solely as and because he is superintendent of said North Bloomfield Gravel Mining Company, and that said L. L. Meyers is not a proper or necessary party to said suit, or to any relief sought in or by said bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing in said bill, the said defendant L. L. Meyers doth demur thereto, and humbly demands the judgment of this Court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

CROSS, FORD, KELLY & ABBOTT,
Solicitors for the Defendant L. L. Meyers.

State of California, }
County of Nevada. } ss.

L. L. Meyers, being first duly sworn according to law, deposes and says that he is the above-named defendant; that the foregoing demurrer is not interposed for delay.

L. L. MEYERS.

Subscribed and sworn to before me this 5 day of August, A. D. 1895.

[Seal]

I. J. ROLFE,
Notary Public.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

CROSS, FORD, KELLY & ABBOTT,
Solicitors for Respondent L. L. Meyers.

Due service of the within demurrer and receipt of a copy thereof is hereby admitted this 6th day of August, 1895.

H. S. FOOTE,
Attorney for U. S. A.

[Endorsed]: Demurrer of L. L. Meyers. Filed August 7, 1895. W. J. Costigan Clerk. By W. B. Beazley Deputy Clerk.

At a stated term, to-wit, the November term, A. D. 1895, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the city and county of San Francisco, on Monday, the 16th day of December, in the year of our Lord, one thousand eight hundred and ninety-five.

Present: The Honorable JOSEPH McKENNA, Circuit Judge.

THE UNITED STATES,

vs.

NORTH BLOOMFIELD GRAVEL MIN-
ING COMPANY, et al.

} No. 12086.

**Order Granting Motion of Defendant Meyers to
be Dismissed from Bill.**

The motion of the defendant Meyers to be dismissed from the bill herein, having been heretofore submitted, and having been fully considered, the Court delivered its oral opinion, and ordered that said motion be, and the same hereby is, granted.

Upon motion of H. S. Foote, Esq., U. S. Attorney, it was ordered that the complainant have leave to amend the bill of complaint herein within twenty days, if it be so advised.

*In the Circuit Court of the United States, Ninth Circuit, in
and for the Northern District of California.*

IN EQUITY.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

THE NORTH BLOOMFIELD GRAVEL
MINING COMPANY (a Corporation),
Defendant.

No. 12,086.

**Demurrer of North Bloomfield Gravel Mining
Company.**

Demurrer of the North Bloomfield Gravel Mining Company, defendant in the above-entitled cause, to the bill of complaint of the United States of America, the above-named complainant.

This defendant, the North Bloomfield Gravel Mining Company, a corporation, by protestation, not confessing all or any of the matters and things in the complainant's last amended bill of complaint contained to be true, in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth:

That the said complainant hath not, in and by its said bill, made or stated such a cause as entitles it in a court of equity to any discovery from this defendant, or to any relief against said defendant, as to the matters contained in said bill, or of any such matters.

Wherefore, and for divers other good causes of demurrer, appearing in said bill, the said defendant, the North Bloomfield Gravel Mining Company, doth demur thereto, and humbly demands the judgment of this Court whether it shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

CROSS, FORD, KELLY & ABBOTT,
Solicitors for the Defendant, the North Bloomfield Gravel
Mining Company.

State of California, }
City and County of San Francisco. } ss.

Henry Pichoir, being first duly sworn according to law, deposes and says that he is the secretary of the above-named corporation defendant, the North Bloomfield Gravel Mining Company; that the foregoing demurrer is not interposed for delay.

H. PICHOR.

Subscribed and sworn to before me this 9th day of January, A. D. 1896.

[Seal]

GEO. T. KNOX,
Notary Public.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

CROSS, FORD, KELLY & ABBOTT,

Solicitors for Defendant, the North Bloomfield Gravel Mining Company.

Rec'd this day a copy of the within demurrer.

H. S. FOOTE,

U. S. Atty.

[Endorsed]: Filed January 9th, 1896. W. J. Costigan,
Clerk.

At a stated term, to-wit, the February term, A. D. 1896, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the city and county of San Francisco, on Monday, the 9th day of March, in the year of our Lord, one thousand eight hundred and ninety-six.

Present The Honorable JOSEPH McKENNA, Circuit Judge.

THE UNITED STATES,

vs.

NORTH BLOOMFIELD GRAVEL
MINING CO.

} No. 12,086.

**Order Overruling Demurrer of North Bloomfield
Gravel Mining Company.**

The demurrer of the defendant to the bill of complaint herein came on this day to be heard, Samuel Knight, Esq., Assistant U. S. Attorney appearing for complainant, and C. W. Cross, Esq., appearing for defendant, and was argued and submitted to the Court for consideration and decision. And the same having been fully considered, it is ordered that said demurrer be and the same hereby is overruled, with leave to the defendant to plead or answer on or before next rule day as he may elect.



*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

IN EQUITY.

THE UNITED STATES,

Complainant,

vs.

THE NORTH BLOOMFIELD GRAVEL

MINING COMPANY (a Corporation),

Respondent.



Answer of North Bloomfield Gravel Mining Company.

The answer of the North Bloomfield Gravel Mining Company, a corporation, the respondent, to the bill of complaint of the United States, complainant.

This respondent now, and at all times hereafter, saving to itself all, and all manner of, benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this respondent is advised it is material or necessary for it to make answer to, answering, saith:

I.

Said respondent admits to be true all of the allegations contained in paragraph one of said complainant's bill of complaint, except that the said respondent denies that the said California Debris Commission became and was, or ever became or was, or ever has been, or now is, invested with the jurisdiction of all mining carried on by the hydraulic process in the territory drained by the Sacramento and the San Joaquin river systems in the State of California or in the Northern District of California.

II.

And the said respondent further admits that it is now, and at all times mentioned in said bill of complaint was,

a corporation, organized and existing under and by virtue of the laws of the State of California, for the purpose of mining for gold, and having its principal place of business at the city and county of San Francisco, and its works, gold mine, and mining grounds owned, possessed, and operated by it, at and near the town of North Bloomfield, in Nevada county, all within said State of California and within the Northern District of California.

III.

And the said respondent further admits that the said works, gold mine, and mining grounds possessed, owned, and operated by said respondent, North Bloomfield Gravel Mining Company, are so mined and operated by the hydraulic process of mining, but denies that each and every part thereof, or any part thereof, is situated on and near Yuba river and its different forks, or any of them, but avers that said works and mines are all situated adjacent to a tributary of one of the Yuba rivers, namely Humbug creek, which is a small tributary of one of the main branches of the said Yuba river, but the respondent admits that the said mines and works are situated within territory drained by the Sacramento river system, and within the said State of California and the Northern District of California.

IV.

And the said respondent further admits that the waters of the Sacramento river flow into Suisun bay, and from

thence through the Straits of Carquinez into San Pablo bay and from thence through the Golden Gate into the Pacific Ocean; that the Feather river flows into said Sacramento river; and that the Yuba river flows into said Feather river; and that said rivers, bays, and straits are wholly within said Northern District of California. Admits that the said Sacramento, Feather, and Yuba rivers were, at the time of the cession of the territory of Upper California to the United States by the Republic of Mexico, to-wit, on the second day of February, 1848, ever since have been, and now are, public navigable rivers, and free highways for the use and purpose of commerce and navigation; but denies that the whole of the said Yuba river is, or ever was, a navigable river or a free highway for the use and purposes of commerce and navigation; but, on the contrary, avers that no portion of said Yuba river ever was, or has been, a public navigable river, or a free highway for the use and purpose of commerce and navigation, except that portion of said Yuba river extending from its mouth up stream a distance of about one-half mile or thereabouts; but denies that the said streams are, or ever have been, navigated or navigable by steamboats and other vessels engaged in commerce and navigation within said State, and drawing from eight to sixteen feet of water; but, on the contrary, avers that at ordinary low stages of water in said streams the Sacramento river is, and has been, navigable only for steamers drawing about four feet or less of water, and the said Feather river, for steamers drawing from eighteen inches to two feet of water, and the said Yuba river, at ordinary low stages,

from its mouth up, for more than thirty years has not been navigable for steamers of any draught whatever, or at all.

V.

And this respondent further admits that all of said rivers have their principal sources in the western slope of the Sierra Nevada mountains, which lie in the east and north-east of the Sacramento valley, through which the Sacramento river flows. Admits that all the waters of said western slope of said Sierra Nevada mountains which lies opposite to the said Sacramento valley are tributary to said rivers, and that they have their sources in lakes, springs, small streams, and canyons, which receive their waters from the rain and snow which fall each year to a great depth upon said mountains.

VI.

And the said respondent further denies that it so dumps and discharges the mining debris from its said works, gold mines, and mining grounds, or either or any of them, in such manner that the same or any material portion thereof is ultimately carried or flows into the said Yuba river, its said forks and streams, or that with mining debris from other works, gold mines, and mining grounds so operated by the hydraulic process of mining is then or at all so carried, or flows into, the said Feather, Sacramento, or other rivers or streams forming a part of, or tributary to, said Sacramento river system, and thence into other waters, bays, or straits in said bill of complaint mentioned.

VII.

And the said respondent admits the allegations in paragraph one of subdivision V of said bill of complaint to be true, but as to the allegations contained in paragraph two of said subdivision V, the said respondent says that it admits that the gold contained in, or mingled with, such mining debris is arrested in such flumes, sluices, conduits, or other appliances for saving gold, and that the mining debris is carried and propelled by such streams of water through the said flumes, sluices, and conduits, and, as to the respondent and its mines, dumped and discharged into impounding basins and reservoirs; but the said respondent avers that no material part of the mining debris from its mines, mining grounds, or works is carried thence from said impounding works, or flows into the adjacent streams or canyons, or some place or any place near to them, from which it is carried or moved by the water into such stream or canyons. And the respondent admits that the larger and heavier portions of said mining debris from its said mines, mining grounds, and works are deposited and lodged in said impounding basins, impounding reservoirs, or works, and admits that an immaterial quantity of the smaller or lighter portions thereof are carried down said streams, but denies that the same or fifty per cent of said mining debris, or any portion whatever of said mining debris, is lodged or deposited in said rivers, or any of them, or in their channels, or any of them, or on the lands adjacent thereto, or any of them, but, on the contrary, avers that only a trifling quantity of such mining debris escapes

from, or passes beyond, the impounding works and reservoirs of said respondent, and that the same consists solely of light, flocculent matter, of about the same specific gravity as water, and so finely comminuted as to readily float in, and be moved forward by, the slightest movement of the water in which it is suspended, and that all of said matter so escaping from or passing beyond respondent's impounding works, is carried in suspension in the streams of water of said streams until it reaches the Suisun bay, and that from the head of Suisun bay, by the tidal currents and movements of the water of said Suisun bay, Carquinez straits, San Pablo bay, and the bay of San Francisco, and the tidal currents passing in and out of the Golden Gate, it is all carried and swept into the ocean at distances remote from the land or navigable streams of the State of California, and does not deposit in any place where it either injures or threatens to injure any navigable waters within the jurisdiction of the United States; and the respondent further denies that any portion of the mining debris from its mines, mining grounds, or mining works, at any time since the passage of the Congress of the United States of the act entitled, "An act to create the California Debris Commission and regulate hydraulic mining in the State of California," has, during a large part of each year, or any part of any year, or at all, been deposited or lodged, or is still being deposited or lodged, in the beds and channels, or the beds or bed, or channels or channel, of said rivers or any of said rivers, and further denies that the same will continue to be so deposited or lodged from said respondent's said mines, mining

grounds, or works while such hydraulic mining continues, or otherwise, or at all.

VIII.

And the said respondent admits that the said North Bloomfield Gravel Mining Company has at all times failed, neglected, and refused, and still does utterly fail, neglect, and refuse, to file with said California Debris Commission a verified or any petition, setting forth such facts as will comply with the said act and the rules prescribed by said commission, or at all, either as prescribed in section nine of said act, or any other section thereof, and further admits that it has not, nor has any one on its behalf, executed or acknowledged any deed or other instrument, whereby the said respondent surrendered or surrenders to said United States the right or privilege to regulate by law the manner or method in which the debris or a portion thereof, or any portion thereof, resulting from the working or operating of said works, gold mines, or mining grounds, by said process, shall be restrained, or what amount shall be produced therefrom.

IX.

And further answering, the said respondent alleges that it is not bound to file such or any petition with said California Debris Commission, or such or any deed or written instrument, acknowledged or otherwise, or at all, with said California Debris Commission, but avers that under the said act entitled, "An act to create the California Debris

Commission and regulate hydraulic mining in the State of California," that it has an option to or not to make or file, or present to or with said California Debris Commission, a petition and written deed or other instrument in writing, such as is referred to in paragraph six of said complainant's bill of complaint.

X.

And further answering, the said respondent avers that many years ago, to-wit, about the years 1887 and 1888, the said respondent erected upon lands owned by it, and which had been granted to it for placer mining purposes in fee by the United States government by the patent of said government duly executed by the President of the United States, extensive, complete, and expensive impounding works, which impounding works are so constructed and maintained, and ever since have been so maintained, as to successfully, completely, and permanently impound all of the mining debris resulting from its mining operations upon the mines, mining grounds, and works described in the said bill of complaint or referred to therein and all other mines, mining grounds, and mining works owned by it, except such light and inconsiderable portion of said mining debris as will not settle in water when affected by the least motion, neither when such water is at rest, except the same be maintained in a condition of rest for a long period of time; and that such light and trifling matter, which is exceedingly flocculent in its nature, when it pass-

es from said impounding works, flows into Humbug creek; that said Humbug creek flows with a rapid current into the South Yuba river, and that the South Yuba river flows with a rapid current into the main Yuba river; that the main Yuba river flows with a rapid current into the Feather river, and that the Feather river flows with a rapid current into the Sacramento river; that the Sacramento river, with a moderate current, flows into Suisun bay, and that from the head of Suisun bay to the waters remote from the Golden Gate the waters are constantly agitated and rapidly moved by tidal currents, and that the said light and flocculent matter which so escapes from said respondent's impounding works is carried by the currents of said streams, and by the tidal currents in said other navigable waters, out of the Golden Gate and to localities remote from the shores of the Pacific Ocean, and that neither the same nor any part thereof does or threatens, either by itself or in connection with debris from other mines, to injure any navigable waters situated within the Northern District of California, or otherwise, or elsewhere, or at all.

XI.

And by way of further and special answer and defense to the said complainant's bill of complaint, the said respondent alleges that heretofore on, to-wit, the 25th day of June, A. D. 1888, the said complainant duly filed in the United States Circuit Court in and for the Northern District of California, its bill of complaint in equity, the same being so filed in case No. 7865, against said respondent,

the said last-mentioned bill of complaint containing all of the averments and allegations contained in the complainant's bill of complaint in this action, except the allegations with regard to the act of Congress entitled, "An act to create the California Debris Commission and regulate hydraulic mining in the State of California," and also the appointment of the members of said commission, and also the allegations that the said respondent had not filed with said commission its petition or deed or other written instrument, for that, at the time that said former bill of complaint was so filed, said act of Congress entitled, "An act to create the California Debris Commission and regulate hydraulic mining in the State of California," did not exist, nor did the said California Debris Commission exist, nor was there then in existence any act of similar terms or nature, or any board or officer with similar powers or authorities. That hereafter and on, to-wit, the first day of July, A. D. 1889, the said respondent filed its answer to said former bill of complaint, alleging the construction and maintenance of the aforesaid impounding works, and that thereby the mining debris from its said mines, mining grounds, and works were duly and sufficiently, and permanently impounded and restrained, as hereinbefore alleged, and that thereby the said navigable waters were prevented from being injured, or threatened with injury, from the mining debris from said respondent's said mines, mining grounds, and mining works. That thereafter evidence was duly introduced, and a trial was duly had upon the issues framed in said cause, and thereupon and thereafter it was duly and judicially determined by

said Court in said cause that the respondent's said mining by the hydraulic process of its said mines, mining grounds, and works did not injure, or threaten to injure, the navigable streams or any of the navigable waters of the State of California, or any of the lands adjacent thereto, and that the said respondent could so continue its hydraulic mining operations by the use of its said impounding works, without injuring, or threatening to injure, any of the navigable streams or waters of the State of California, and without injuring, or threatening to injure, the navigability of any of the navigable streams or navigable waters of the State of California, and that ever since said time the said respondent has maintained its said impounding works, and its hydraulic mining operations have been conducted in the same manner and in no other manner, and by the use of said impounding works in the said manner and in no other manner than that which it was in said action adjudicated that said respondent might do, without injuring, or threatening to injure, the navigable streams or navigable waters of the State of California, and without injuring, or threatening to injure, the navigability of said streams or navigable waters of the State of California, or either or any of them, and that the mining lands described or referred to in the bill of complaint in this action and in the bill of complaint in the former said action are the same.

And this respondent denies all and every and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is

any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this respondent to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this respondent, all which matters and things this respondent is ready and willing to aver, maintain, and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

C. W. CROSS,
Solicitor for Respondent.

NORTH BLOOMFIELD GRAVEL MINING CO.

[Seal of North Bloomfield
Gravel Mg. Co.]

By H. PICHOR, Its Secretary.

United States of America,
Northern District of the State of California. } ss.

The answer of the respondent, the North Bloomfield Gravel Mining Company, was taken this 10th day of April, in the year 1896, before me under the common seal of the said corporation, as by their said seal affixed appears.

E. H. HEACOCK,
Commissioner U. S. Circuit Court, Northern District of
California.

Due service of the within answer, and receipt of a true copy thereof, is hereby admitted this 13 (thirteenth) day of April, 1896.

H. S. FOOTE,
U. S. Attorney for Complainant.

[Endorsed]: Answer to complainant's bill. Filed, April 13, 1896. W. J. Costigan, Clerk. By W. B. Beazley, Dep. Clk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

IN EQUITY.

THE UNITED STATES OF AMERICA,	}	No. 12,086.
Complainant,		
vs.		
THE NORTH BLOOMFIELD GRAVEL	}	
MINING COMPANY (a Corporation),		
Respondent.		

Demurrer to Answer.

The demurrer of the complainant in the above-entitled cause, the United States of America, to the answer of the North Bloomfield Gravel Mining Company, a corporation, respondent herein.

The complainant herein, the United States of America, by protestation, not confessing or acknowledging any or all of the matters and things in the said respondent's answer to be true, in such manner and form as the same are therein set forth and alleged, save and except those matters and things which are set out in said complainant's amended bill of complaint herein, and are in said answer expressly admitted to be true, doth demur thereto, and for cause of demurrer showeth that the said respondent hath

not, in and by its said answer, made or stated any case or defense to the equity and cause of action set forth in the amended bill of complaint herein, as doth or ought to entitle it to the judgment prayed for in said answer to be hence dismissed with its costs, or at all.

Wherefore, and for divers other good reasons and causes of demurrer appearing in said answer, the said complainant, the United States of America, doth demur thereto, and humbly demands the judgment of the Court and the relief prayed for, in and in accordance with, the said amended bill of complaint herein.

H. S. FOOTE,

United States Attorney.

SAMUEL KNIGHT,

Assistant United States Attorney,

Solicitors for Complainant.

State and Northern District of California }
City and County of San Francisco. } ss.

Samuel Knight, being first duly sworn, deposes and says that he is one of the solicitors for the complainant herein, the United States of America; that the foregoing demurrer is not interposed for purposes of delay.

SAMUEL KNIGHT.

Subscribed and sworn to before me this 23d day of April, 1896.

W. B. BEAIZLEY,

Commissioner U. S. Circuit Court, Northern District of California.

Certificate.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

H. S. FOOTE,

U. S. Attorney.

SAMUEL KNIGHT,

Assistant U. S. Attorney,

Solicitors for Complainant.

Service of the within demurrer by copy admitted this 23d day of April, 1896.

C. W. CROSS,

Solicitor for Respondent.

[Endorsed]: Filed April 23, 1896. W. J. Costigan, Clerk.
By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

IN EQUITY.

THE UNITED STATES,

Complainant,

vs.

THE NORTH BLOOMFIELD GRAVEL

MINING COMPANY (a Corporation),

Respondent.

Exceptions to Answer.

Exceptions taken by complainant above named to the answer of the said defendant, the North Bloomfield Gravel Mining Company, a corporation, to the said complainant's bill of complaint herein.

The said complainant excepts to the said answer for that the said defendant hath not, in and by said answer, set forth facts and allegations sufficient to constitute a defense to the cause of action stated in said bill of complaint, in that said defendant admits that it "has at all times failed, neglected, and refused, and still does utterly fail, neglect, or refuse to file with said California Debris Commission a verified or any petition, setting forth such facts as will comply with the said act and the rules prescribed by said commission, or at all, either as prescribed in section nine of said act, or any other section thereof, and further admits that it has not, nor has any one in its

behalf, executed or acknowledged any deed or other instrument, whereby the said respondent surrendered or surrenders to said United States the right or privilege to regulate by law the manner or method in which the debris or a portion thereof, or any portion thereof, resulting from the working or operating of said works, gold mines, or mining grounds, by said process, shall be restrained, or what amount shall be produced therefrom."

It further alleges: "That it is not bound to file such or any petition with said California Debris Commission or such or any deed or written instrument, acknowledged or otherwise, or at all, with said California Debris Commission."

Therefore, the answer of said defendant is, as said complainant is advised, imperfect and insufficient, and said complainant excepts thereto, and prays that same may be stricken from the files of the court; and that the Court proceed to give its judgment and decree in favor of said complainant, as prayed in its bill of complaint herein.

H. S. FOOTE,

U. S. Atty.

SAMUEL KNIGHT,

Asst. U. S. Attorney,

Solicitors for Complainant.

Service of the within by copy admitted this 27th day of July, 1896.

C. W. CROSS,

Attorney for Deft.

[Endorsed]: Filed July 27th, 1896. W. J. Costigan, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE NORTH BLOOMFIELD GRAVEL

MINING COMPANY (a Corporation),

Defendant.

Motion to Strike Answer from Files.

Now comes the complainant above named and moves the Court to strike from its files the answer of the defendant herein to the complainant's amended bill of complaint, on the ground that the said answer does not, nor does any part thereof, state facts sufficient, and is insufficient, to constitute a defense to said bill of complaint.

This motion will be made on the files herein.

25 July, 1896.

H. S. FOOTE,

U. S. Atty.

SAMUEL KNIGHT,

Asst. U. S. Atty.,

Solicitors for Complainant.

Service of the within by copy admitted this 27th day of July, 1896.

C. W. CROSS,
Attorney for Deft.

[Endorsed]: Filed July 27th, 1896. W. J. Costigan,
Clerk. By W. B. Beaizley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

NORTH BLOOMFIELD GRAVEL MIN-
ING COMPANY,
Respondent.

No. 12,086.

Enrollment.

The complainant filed its bill of complaint herein on the 19th day of June, 1895, which is hereto annexed.

A subpoena to appear and answer in said cause was thereupon issued, returnable on the fifth day of August, A. D. 1895, which is hereto annexed.

The respondents appeared herein on the 8th day of July, 1895, by Cross, Ford, Kelly & Abbott, Esqs., their solicitors.

On the 3d day of August, 1895, a demurrer of defendant North Bloomfield Gravel Mining Company was filed herein, which is hereto annexed.

On the 3d day of August, 1895, a motion of defendant Meyer to strike out, etc., was filed herein, and is hereto annexed.

On the 7th day of August, 1895, a demurrer of defendant Meyer was filed herein, and is hereto annexed.

On the 16th day of December, 1895, an order granting defendant Meyer's motion to dismiss was made and entered herein, a copy of which is hereto annexed.

On the 9th of January, 1896, a demurrer of the defendant North Bloomfield Gravel Mining Co. was filed herein, and is hereto annexed.

On the 9th of March, 1896, an order overruling said demurrer was made and entered herein, a copy of which is hereto annexed.

On the 13th day of April, 1896, the defendant filed an answer herein, which is hereto annexed.

On the 27th day of July, 1896, the complainant filed a demurrer to said answer, exceptions to said answer, and motion to strike out said answer, which are hereto annexed.

Said cause was submitted upon bill and answer, and thereafter a final decree was duly signed, filed, and entered herein, in the words and figures following, to-wit:

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

IN EQUITY.

THE UNITED STATES,

Complainant,

vs.

THE NORTH BLOOMFIELD GRAVEL
MINING COMPANY (a Corporation),

Respondent.

No. 12,086.

Decree.

This cause came regularly on for hearing before the Court upon the 25th day of January, 1897, upon bill and answer, Messrs. Samuel Knight, Assistant U. S. Attorney, and Robert T. Devlin, as amicus curiae, appearing as solicitors on behalf of complainant, and Messrs. C. W. Cross and Chas. A. Garter appearing as solicitors on behalf of respondent, and the said matter having been thereupon submitted to the Court for determination and decision, and the Court having been fully advised in the premises, and after due consideration thereof, it is by the Court ordered, adjudged, and decreed:

That an injunction issue out of and under the seal of this Court directed to respondent, as prayed for in said

bill, perpetually enjoining and restraining it, its officers, agents, grantees, lessees, or employees, from continuing to operate, and from operating or suffering or allowing to be operated, by the hydraulic process or method of mining, as the same is and has been known, conducted, practiced, or understood in the State of California (as set forth in paragraph V of said bill), its works, mines, or mining grounds, situate, lying, and being adjacent to, on, or near Humbug creek, a tributary of the Yuba river, until said respondent shall properly make, present, and file with the California Debris Commission, appointed and acting under an act of Congress entitled, "An Act to create the California Debris Commission and regulate hydraulic mining in the State of California," approved March 1, 1893, its duly verified petition setting forth such facts as will comply with said act or any act hereafter amendatory thereof and then in force, and the rules prescribed or to hereafter at such time prescribed by said California Debris Commission; and until said respondent shall duly execute, acknowledge, and deliver to said commission the deed or instrument provided for in said act or any act hereafter amendatory thereof and then in force whereby said respondent surrenders to the United States the right and privilege to regulate by law, as provided in said act or by any law that may be hereafter enacted, or by such rules and regulations as are or may be prescribed by virtue thereof, the manner and method in which the debris resulting from the working and operation by the said hydraulic process of said works, mines, or mining

grounds or claims shall be retained, and what amount shall be produced therefrom; and further, that complainant have and recover of said respondent its costs herein, taxed at the sum of \$42.30.

Dated June 10, 1897.

ROSS,
Circuit Judge.

[Endorsed]: Filed and entered June 10, 1897. W. J. Costigan, Clerk.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE UNITED STATES,

Complainant,

vs.

THE NORTH BLOOMFIELD GRAVEL

MINING CO.,

Respondent.

Memorandum of Costs and Disbursements.

Disbursements:

Marshal's fees \$ 4.00

Clerk's fees 18.30

Docket fee 20.00

Total..... \$42.30

Taxed at \$42.30.

United States of America,

Northern District of California,

City and County of San Francisco.

} ss.

Samuel Knight, being duly sworn, deposes and says that he is Asst. U. S. Attorney, and one of the attorneys for the complainant in the above-entitled cause, and as such

is better informed relative to the above costs and disbursements than the said complainant; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

SAMUEL KNIGHT.

Subscribed and sworn to before me this 14th day of June, A. D. 1897.

W. B. BEAIZLEY,

Commissioner of the U. S. Circuit Court, Northern District of California.

To C. W. Cross and Chas. A. Garter, Attorneys for Respondents, San Francisco, Cal.

You will please take notice that on Wednesday, the sixteenth day of June, A. D. 1897, at the hour of 10 o'clock A. M., I will apply to the clerk of said court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

H. S. FOOTE,

Attorney for Complainant.

Service of within memorandum of costs and disbursements, and receipt of a copy thereof, acknowledged this 14th day of June, A. D. 1897.

C. W. CROSS,

Attorney for Respondent.

[Endorsed]: Memorandum of costs and disbursements. Filed this 15th day of June, A. D. 1897. W. J. Costigan, Clerk.

Certificate to Enrollment.

Whereupon, said pleadings, subpoena, copies of orders, decree, and a memorandum of taxed costs are here-to annexed, said final decree being duly signed, filed, and enrolled, pursuant to the practice of said Circuit Court.

Attest, etc.

W. J. COSTIGAN,

[Seal]

Clerk.

By W. B. Beazley,

Deputy Clerk.

[Endorsed]: Enrolled papers. Filed June 10th, 1897.
W. J. Costigan, Clerk. By W. B. Beazley, Deputy Clerk.

*In the United States Circuit Court, Ninth Circuit, North-
ern District of California.*

THE UNITED STATES,

Complainant,

vs.

THE NORTH BLOOMFIELD GRAVEL

MINING COMPANY (a Corporation),

Respondent.

Opinion.

This case was submitted upon bill and answer. It involves the construction of the act of Congress entitled "An Act to create the California Debris Commission and

regulate hydraulic mining in the State of California," approved March 1, 1893. (Statutes of 1891-1893, p. 507.) The bill alleges the appointment and qualification of the commissioners provided for by that act, and the entry upon its duties by the commission. It alleges that the defendant company is, and was at the times mentioned in the bill, the owner and in possession of certain mining ground situated on or near the Yuba river and its tributaries, within the territory drained by the Sacramento and San Joaquin rivers, and is, and was during the times mentioned, engaged in working its mining ground by the hydraulic process; that the waters of the Sacramento river flow into Suisun bay, and thence through the Straits of Carquinez into San Pablo bay, and thence through the Golden Gate into the Pacific Ocean; that Feather river flows into the Sacramento, and that Yuba river flows into the Feather; that all of these rivers were, at the time of the cession of the territory of Upper California to the United States by the Republic of Mexico, to-wit, February 2, 1848, and ever since have been, and now are, public navigable rivers, and free highways for the uses and purposes of commerce and navigation, and during all of the time mentioned were, and still are, navigable and navigated by steamboats and other vessels, drawing from eight to sixteen feet of water, and engaged in commerce and navigation within the State of California; that the Sacramento river during all of the time mentioned was, and still is, so navigable and navigated by steamboats and other vessels from its mouth to the mouth of Middle creek, in Shasta county, above the point of confluence of the Sac-

ramento and Feather rivers; that the Feather river during the same time was, and still is, so navigable from its mouth to the mouth of the Yuba river, and that the Yuba river during the same time was, and still is, navigable from its mouth to a point about one mile above its mouth; that all of the rivers mentioned have their principal sources in the western slope of the Sierra Nevada Mountains which lie to the east and northeast of the Sacramento valley, through which the Sacramento river flows, and in a small part in the eastern slope of the Coast Range Mountains, which lie to the west of the Sacramento valley; that all of the waters of the western slope of the Sierra Nevada Mountains which lies opposite the Sacramento valley are tributary to the rivers mentioned, and that they have their sources in lakes, springs, small streams, and canyons, which receive their waters from the rain and snow which fall each year to a great depth upon the mountains; that the defendant company, in working its mining ground, so dumps and discharges the debris therefrom as that the same, or a portion thereof, is ultimately carried and flows into the Yuba river and its forks, and with the debris from other mining works operated by the same process is thence so carried and flows into the Feather, Sacramento, and other streams forming a part of and tributary to the Sacramento river system, and thence into the other waters, bays and straits already mentioned; that hydraulic mining as now, and for more than twenty years last past, practiced and understood in the State of California, is a process of gold mining by which hills, ridges, banks, and

other forms of deposits of earth which contain gold are mined and removed from their position by means of large streams of water, which by great pressure are forced through pipes terminating in nozzles, known as monitors or little giants; that the water is discharged from such nozzles with great force, by a water pressure of from 50 to 400 feet per second, against and upon the hills, ridges, banks, and other deposits, which are usually shattered or broken up by means of blasts of powder, and softened by running water over and along such shattered or broken banks of earth, and undermined by streams of water flowing at the foot of such banks, thus caving down and washing off portions thereof before water is discharged from the nozzles against them; that the clay, sand, gravel, stones, rocks, and boulders of which such gold mines are composed, known as mining debris, together with the gold contained therein, are carried and moved by the streams of water into and through flumes, sluices, and other conduits at or adjacent to the respective mining claims—the gold being arrested therein, and the debris being carried by the water through the flumes, sluices, and conduits, and dumped or discharged into impounding basins or reservoirs, and that a part of such debris is thence carried and flows into the adjacent streams or canyons; that the larger and heavier portions of the debris are deposited in such impounding basins or reservoirs, and the smaller and lighter portions, being not less than 50 per cent thereof, are carried down the streams and lodged in the rivers and other channels and upon the lands adjacent thereto; that a portion of such mining de-

bris, ever since the commencement of hydraulic mining within the State, has, during a large part of each year, been deposited and lodged, and is still being deposited and lodged, in the beds and channels of the rivers mentioned, and will continue to be so deposited and lodged while such hydraulic mining continues. The bill next alleges that the defendant company has failed and neglected and refused to file with the California Debris Commission a verified, or any, petition, setting forth such facts as will comply with the act of Congress upon the subject and with the rules prescribed by the Commission, and has not, nor has any one on its behalf, executed and acknowledged the conveyance mentioned in that act, and, notwithstanding such neglect and failure, that the defendant company has continued to mine, and is now engaged in mining, its mining ground by the hydraulic process. The prayer of the bill is for a writ of injunction perpetually enjoining the defendant, its agents, grantees, lessees, and employees, from operating, or allowing to be operated by the hydraulic process, its mining ground, until it shall make, present, and file with the Debris Commission the petition set forth in the aforesaid act of Congress, accompanied by the conveyance therein mentioned, and otherwise conform to the rules and regulations prescribed by the commission by virtue of that statute.

The answer of the defendant company admits the appointment of the commissioners and their qualification and organization as alleged, and its failure to file with the commission the petition and conveyance mentioned in the act, and the fact of its mining its ground by the hy-

draulic process notwithstanding. It alleges that its mines and works are all situated adjacent to Humbug creek, a small tributary of one of the main branches of the Yuba river, and within the territory drained by the Sacramento river system. It admits the fact of the navigability of the Sacramento, Feather, and Yuba rivers, but denies the extent of the navigability alleged in the bill. It admits the sources of the rivers as alleged. It denies that it so dumps and discharges the debris from its mines and works, or any thereof, in such manner that the same, or any material portion of it, is ultimately carried or flows into the Yuba, Feather, or Sacramento rivers, or other streams forming a part of or tributary thereto, or upon the lands adjacent thereto, but avers that only a trifling quantity of the debris from the defendant's mining ground escapes from or passes beyond the impounding works and reservoirs of the defendant company, and that the same consists solely of light, flocculent matter of about the same specific gravity as water, and so finely communicated as to readily float in and be moved by the slightest movement of the water in which it is suspended, and that all of the matter so escaping from or passing beyond the defendant's impounding works is carried in suspension in the streams of water until it reaches the Suisun bay, and that from the head of Suisun bay, by the tidal currents and movements of the water of that bay, of the Carquinez Straits, San Pablo bay, and the bay of San Francisco, and the tidal currents passing in and out of the Golden Gate, it is all carried and swept into the ocean at distances remote from the land or navigable

streams of the State of California, and does not deposit in any place where it either injures, or threatens to injure, any navigable waters within the jurisdiction of the United States. The answer further denies that any portion of the debris from the defendant's mines or mining works at any time since the passage of the act of Congress in question, has been deposited or lodged in the beds or channels of either of the rivers named, and denies that any of such debris will be so deposited or lodged while it continues the mining of its ground by the hydraulic process. The answer further avers that about the years 1887 and 1888 the defendant erected upon its mining ground, which had been conveyed to it for placer mining purposes by the government of the United States, extensive, complete, and expensive impounding works, which have ever since been so maintained as to successfully, completely, and permanently impound all of the mining debris resulting from its mining operations, upon its mining ground, except such light and inconsiderable portion of the debris therefrom as will not settle in water when affected by the least motion, nor when such water is at rest, unless the same be maintained in a condition of rest for a long period of time, and that such light and flocculent matter, when it passes from the defendant's impounding works, flows into Humbug creek, which creek flows with a rapid current into the South Yuba river, and that the South Yuba river flows with a rapid current into the main Yuba river, and that the main Yuba river flows with a rapid current into the Feather river, and that the

Feather river flows with a rapid current into the Sacramento river; that the Sacramento river, with a moderate current, flows into Suisun bay, and that from the head of Suisun bay to the waters remote from the Golden Gate the waters are constantly agitated and rapidly moved by tidal currents, and that the light and flocculent matter which so escapes from the defendant's impounding works is carried by the currents of the streams mentioned, and by the tidal currents in the other navigable waters named, out of the Golden Gate and to localities remote from the shores of the Pacific Ocean, and that no part thereof does injure or threatens to injure, either by itself, or in connection with debris from other mines, any of the navigable waters mentioned in the bill, or any other waters. The answer further alleges that on the 25th day of June, 1888, the United States filed in this court its bill in equity against this defendant, containing all of the averments of the present bill, except the allegations with regard to the act of Congress of March 1, 1893 (which was not then in existence), and the appointment of the members of the commission thereby created, and the allegations with respect to the failure of the defendant to file with the commission the petition and conveyance required by that act; that thereafter, and on July 1, 1889, the defendant filed its answer to that bill of complaint, alleging the construction and maintenance of the aforesaid impounding works, and that thereby the debris from its mining ground was sufficiently and permanently impounded and restrained, as is alleged in the present answer, and that

thereby the navigable waters mentioned were prevented from being injured or threatened with injury from the debris from the defendant's mines; that thereafter a trial was duly had upon the issues framed in the cause, upon which trial it was duly adjudged that the defendant's mining by the hydraulic process did not injure, or threaten to injure, the navigable streams or any of the navigable waters of the State of California, or any of the lands adjacent thereto, and that the defendant could continue its hydraulic mining operations by the use of its said impounding works without injuring, or threatening to injure, any of the navigable waters of the State of California and without injuring, or threatening to injure, the navigability of any of the navigable streams of the State, and that ever since that time the defendant has maintained its said impounding works, and its hydraulic mining operations have ever since been conducted in the same manner (and in no other manner), that it was in that action adjudicated they might be without injury to any waters or lands; that the mining ground and works described in the bill in the present suit and in the bill in the former suit are the same.

As the case is submitted on bill and answer, such of the averments of the latter as are inconsistent with the allegations of the bill, as well as the affirmative matter set up in defense of the suit, must be taken as true.

It is thus made to appear that none of the debris from the mining ground or works of the defendant company is lodged or deposited in any of the navigable waters men-

tioned in the bill, or upon any land adjacent thereto; but, on the contrary, that such light, flocculent matter as escapes from the mines and impounding works of the defendant company is carried in suspension by the moving streams and waters into the Pacific Ocean, beyond the jurisdiction of the United States.

If, however, Congress has, in the exercise of its power to declare what may or may not constitute obstructions thereto, by its act, prohibited the putting into the said navigable waters any such light, flocculent matter, there can be no doubt, I think, of the power of a court of equity to prevent, by writ of injunction, the unlawful act. (*In re Debs*, 158 U. S. 565, 599, 600.)

The absolute power and control of Congress over the navigable waters of the United States, in the interest of commerce with foreign nations and among the several States, and its right to declare what may or may not constitute obstructions thereto, is thoroughly settled. (*Miller v. Mayor, etc.*, 109 U. S. 385; *Cardwell v. American River Bridge Co.*, 113 U. S. 205; *Escanaber Co. v. Chicago*, 107 U. S. 678; *South Carolina v. Georgia*, 93 U. S. 4; *Gilman v. Philadelphia*, 3 Wall. 713.)

Subject to this power on the part of Congress, all of the navigable waters within the State of California are common highways. The State was admitted into the Union upon the condition, among other conditions, "that all of the navigable waters within the said State shall be common highways and forever free, as well to the inhabitants of said State as to the citizens of the United States, with-

out any tax, duty, or impost therefor." (9 U. S. Stats. at Large, 452-3.)

The important question in the case is, What has Congress enacted in respect to the navigable waters mentioned in the bill, in connection with mining by the hydraulic process? There is but one act upon the subject, and that is the one the construction of which is here involved. To properly construe it, the conditions giving rise to its enactment must be considered. Long-continued mining by this process, in the territory drained by the rivers mentioned, had resulted in depositing in them and upon much of the adjacent land vast quantities of debris, thereby, to a great extent, impeding the navigation of the waters, and rendering valueless large quantities of otherwise fertile lands. This unfortunate condition of affairs necessarily gave rise to many and bitter contests in the courts between the conflicting interests. Some of the suits were brought in this court, and many of them in the courts of the State, resulting, ultimately, wherever it was shown that such hydraulic mining was causing injury to the public streams or waters, or to other's lands, in perpetually enjoining such mining. One of such suits was brought against the present defendant, in this court, to enjoin it from working by the hydraulic process the same mining ground it is now operating. That suit resulted in a decree enjoining the defendant from so working its mining ground; but the decree contained a provision to the effect that if, in the future, the defendant corporation should show to the Court that it had con-

structed impounding reservoirs which would successfully impound its mining debris, the decree might be modified so as to permit the operation of the mine. That case was tried and decided by Judge Sawyer, and is reported in 18 Fed. Rep. 753, under the title of *Woodruff v. Mining Co.* Sometime after the making of the decree, the defendant established a system of impounding works, and commenced again its mining operations. That action on the part of the defendant resulted in a suit brought in this court by the United States, against the defendant, to obtain an injunction prohibiting it from continuing its hydraulic mining operations. After a trial of that case, in which much testimony was introduced, this Court (Judge Gilbert presiding) found that by the construction and use of its impounding works, the defendant prevented the escape of any debris from its mine into the navigable waters of the rivers mentioned that would tend to impair or injure their navigability, and therefore denied the injunction prayed for.

In neither of these decisions was mining by the hydraulic process regarded, in and of itself, as unlawful. That it is not unlawful, but highly useful and commendable, when properly conducted and without injury to the property or rights of others, hardly needs judicial decision. In *County of Yuba v. Cloke*, 70 Cal. 239, 243, the Supreme Court of California said: "It seems to us it must be conceded that the business of hydraulic mining is not within itself unlawful or necessarily injurious to others. The unlawful nature of the business results from the man-

ner in which it is carried on, and the neglect of parties engaged therein to properly care for the debris resulting therefrom, whereby it is allowed to follow the stream and eventually cause injury to property situated below."

Nobody wanted gold mining by the hydraulic process stopped, so long as it could be prosecuted without injury to the navigable waters or to the property or rights of others. And so an effort was made by the parties most directly interested—the miners and agriculturists—to induce Congress to legislate upon the subject; which effort resulted in the passage of the act of March 1, 1893. As enacted, after creating the California Debris Commission and providing for the appointment of its members, and for the filling of vacancies occurring therein, and for the exercise of the powers conferred upon it, under the direction of the Secretary of War, and the supervision of the chief of engineers, and authorizing commission to adopt rules and regulations, not inconsistent with law, to govern its deliberations and procedure, the act declared the jurisdiction of the commission, in so far as the same affects mining carried on by the hydraulic process, to extend to all such mining in the territory drained by the Sacramento and San Joaquin river systems in the State of California. It declared, for the purposes of the act, "hydraulic mining" and "mining by the hydraulic process" to have the meaning and application given to those terms in the State of California.

That meaning is sufficiently set out in the bill in the present case.

The act prohibited and declared unlawful such hydraulic mining "directly or indirectly injuring the navigability of said river systems, carried on in said territory, other than as permitted under" its provisions. (Sections 3 and 22.) But this was by no means the extent of the act or of its prohibition. Its very purpose was to provide a means by which such mining could be carried on in the territory named, without injuring the navigability of the said river systems, directly or indirectly. Recognizing the great damage that had been done to the navigable waters mentioned by hydraulic mining in the past, it created a commission of skilled officers, to exercise the powers conferred upon it, under the direction of the Secretary of War and the supervision of the Chief of Engineers of the Army, and, by section 4 of the act, made it the duty of the commission to mature and adopt, from examinations and surveys already made, and from such additional examinations and surveys as the commission should deem necessary, such plan or plans "as will improve the navigability of all the rivers comprising said systems, deepen their channels, and protect their banks. Such plan or plans shall be matured with a view of making the same effective as against the encroachment of and damage from debris resulting from mining operations, natural erosion, or other causes, with a view of restoring, as near as practicable and the necessities of commerce and navigation demand, the navigability of said rivers to the condition existing in eighteen hundred and sixty, and permitting mining by the hydraulic process, as the term

is understood in said State, to be carried on, provided the same can be accomplished without injury to the navigability of said rivers or the lands adjacent thereto." By section 5 of the act, it is made the duty of the commission to "further examine, survey, and determine the utility and practicability, for the purposes hereinafter indicated, of storage sites in the tributaries of said rivers and in the respective branches of said tributaries, or in the plains, basins, sloughs, and tule and swamp lands adjacent to or along the course of said rivers, for the storage of debris or water, or as settling reservoirs, with the object of using the same by either or all of these methods to aid in the improvement and protection of said navigable rivers, by preventing deposits therein of debris resulting from mining operations, natural erosion, or other causes, or for affording relief thereto in flood times, and providing sufficient water to maintain scouring force therein in the summer season; and, in connection therewith, to investigate such hydraulic and other mines as are now or may have been worked by methods intended to restrain the debris and material moved in operating such mines by impounding dams, settling reservoirs, or otherwise, and in general to make such study of and researches in the hydraulic mining industry as science, experience, and engineering skill may suggest as practicable and useful in devising a method or methods whereby such mining may be carried on as aforesaid."

Sections 9 and 10 of the act are as follows:

"Sec 9. That the individual proprietor or proprietors,

or, in case of a corporation, its manager or agent appointed for that purpose, owning mining ground in the territory in the State of California mentioned in section three hereof, which it is desired to work by the hydraulic process, must file with said commission a verified petition, setting forth such facts as will comply with law and the rules prescribed by said commission."

"Sec. 10. That said petition shall be accompanied by an instrument duly executed and acknowledged as required by the law of the said State, whereby the owner or owners of such mine or mines surrender to the United States the right and privilege to regulate by law, as provided in this act, or any law that may hereafter be enacted, or by such rules and regulations as may be prescribed by virtue thereof, the manner and method in which the debris resulting from the working of said mine or mines shall be restrained and what amount shall be produced therefrom; it being understood that the surrender aforesaid shall not be construed as in any way affecting the right of such owner or owners to operate said mine or mines by any other process or method now in use in said State; provided, that they shall not interfere with the navigability of the aforesaid rivers."

Subsequent sections provide for a joint petition by the owners of several mining claims so situated as to require a common dumping ground or restraining works, and for proceedings of the commission thereon, including the provision contained in section 14, that upon the completion of such work as may be authorized and required by

order of the commission, "if found in every respect to meet the requirements of the said order and said approved plans and specifications, permission shall thereupon be granted to the owner or owners of such mine or mines to commence mining operations, subject to the conditions of said order and the provisions of this act."

Section 15 is as follows:

"Sec. 15. That no permission granted to a mine owner or owners under this act shall take effect, so far as regards the working of a mine, until all impounding dams or other restraining works, if any are prescribed by the order granting such permission, have been completed, and until the impounding dams, or other restraining works, or settling reservoirs provided by said commission have reached such a stage as, in the opinion of said commission, it is safe to use the same; provided, however, that if said commission shall be of the opinion that the restraining and other works already constructed at the mine or mines shall be sufficient to protect the navigable rivers of said systems and the work of said commission, then the owner or owners of such mine or mines may be permitted to commence operations."

And by section 17 it is declared: "That at no time shall any more debris be permitted to be washed away from any hydraulic mine or mines situated on the tributaries of said rivers and the respective branches of each, worked under the provisions of this act, than can be impounded within the restraining works erected."

From these provisions (and there is nothing in the act

to the contrary) it seems quite clear to me that its real intent and meaning is, to prohibit and make unlawful any and all hydraulic mining in the territory drained by the Sacramento and San Joaquin river systems in the State of California, directly or indirectly injuring the navigability of said river systems, and to permit it in all cases where the work can be prosecuted without such injury to the navigability of the said river systems, or to the lands adjacent thereto. That in order to properly determine the facts upon which the legislative will is to act, a skilled commission is created, whose duty it is to ascertain and determine what will, or will not, cause the prohibited injury, and to prescribe the character of impounding works, and the extent to which hydraulic mining in the territory described may be carried on without causing such injury. To give effect to this manifest purpose, Congress, in effect, enacted that until the commission should find that such mining can be carried on without causing the prohibited injury, all hydraulic mining within the territory drained by the Sacramento and San Joaquin river systems is unlawful; for by section 9 it is in terms declared that any person or corporation owning mining ground in that territory, "which it is desired to work by the hydraulic process, must file with said commission a verified petition setting forth such facts as will comply with law and the rules prescribed by said commission," accompanied by the instrument described in the next section, that is to say: "An instrument duly executed and acknowledged as required by the law of the said State,

whereby the owner or owners of such mine or mines surrender to the United States the right and privilege to regulate by law, as provided in this act, or any law that may hereafter be enacted, or by such rules and regulations as may be prescribed by virtue thereof, the manner and method in which the debris resulting from the working of said mine or mines shall be restrained and what amount shall be produced therefrom; it being understood that the surrender aforesaid shall not be construed as in any way affecting the right of such owner or owners to operate said mine or mines by any other process or method now in use in said State; provided, that they shall not interfere with the navigability of the aforesaid rivers." The plain meaning of the provision that any person or corporation owning mining ground within the territory drained by the rivers mentioned, which it is desired to work by hydraulic process, must file a certain described petition, is, that unless such petition be filed, such ground shall not be worked. Confirmation of this is found in the express declaration contained in section 17, "that at no time shall any more debris be permitted to be washed away from any hydraulic mine or mines situated on the tributaries of said rivers and the respective branches of each, worked under the provisions of this act, than can be impounded within the restraining works erected," and in other clauses of the act already cited.

As has been already observed, the right of Congress to say what may or may not constitute an obstruction of the navigable waters between the States or connecting with

the ocean, is well settled. Light, flocculent matter escaping from one or more mines worked by the hydraulic process and carried into such waters may not tend to injure their navigability, but such matter, in connection with similar matter from a great many other mines, may do so. It was the right of Congress to put a stop to the working of all mines that contribute in any degree to such injury, and to prescribe the conditions upon which such work so contributing might be prosecuted. In some of the contests that were brought before the courts, prior to the passage of the act in question, it was held that any and all persons and corporations contributing to the injury should be enjoined. (*Woodruff v. Mining Co.*, *supra*; *People v. Gold Run D. & M. Co.*, 66 Cal. 138, and cases there cited.)

In the case of *Miller v. Mayor of New York*, 109 U. S. 385, Congress had passed an act (15 Stats. 336) authorizing the construction of a bridge over East river, between the cities of New York and Brooklyn, and declaring that when completed it should be "a lawful structure and post road for the conveyance of the mails of the United States; provided, that the said bridge shall be so constructed and built as not to obstruct, impair, or injuriously modify the navigation of the river; and in order to secure a compliance with these conditions, the company, previous to commencing the construction of the bridge, shall submit to the Secretary of War a plan of the bridge, with a detailed map of the river at the proposed site of the bridge and for the distance of a mile above and below the site, exhibit-

ing the depths and currents at all points of the same, together with all other information touching said bridge and river as may be deemed requisite by the Secretary of War to determine whether the said bridge, when built will conform to the prescribed conditions of the act, not to obstruct, impair, or injuriously modify the navigation of the river."

The second section of the act was as follows: "That the Secretary of War is hereby authorized and directed, upon receiving said plan and map and other information, and upon being satisfied that a bridge built on such plan, and at said locality, will conform to the prescribed conditions of this act, not to obstruct, impair, or injuriously modify the navigation of said river, to notify the said company that he approves the same, and upon receiving such notification the said company may proceed to the erection of said bridge, conforming strictly to the approved plan and location. But until the Secretary of War approve the plan and location of said bridge, and notify said company of the same in writing, the bridge shall not be built or commenced; and should any change be made in the plan of the bridge during the progress of the work thereon, such change shall be subject likewise to the approval of the Secretary of War."

It was contended by the plaintiff in the case, who sought to restrain the building of the bridge, that Congress could not leave it to the Secretary of War to determine whether the proposed construction would be an obstruction to the navigation of the river; but the Court

answered: "By submitting the matter to the secretary, Congress did not abdicate any of its authority to determine what should or should not be deemed an obstruction to the navigation of the river. It simply declared that, upon a certain fact being established, the bridge should be deemed a lawful structure, and employed the Secretary of War as an agent to ascertain that fact. Having power to regulate commerce with foreign nations and among the several States, and navigation being a branch of that commerce, it has the control of all navigable waters between States, or connecting with the ocean, so as to preserve and protect their free navigation. Its power, therefore, to determine what shall not be deemed, so far as that commerce is concerned, an obstruction, is necessarily paramount and conclusive. It may in direct terms declare absolutely, or on conditions, that a bridge of a particular height shall not be deemed such an obstruction; and, in the latter case, make its declaration take effect when those conditions are complied with. The act in question, in requiring the approval of the secretary before the construction of the bridge was permitted, was not essentially different from a great mass of legislation directing certain measures to be taken upon the happening of particular contingencies or the ascertainment of particular information. The execution of a vast number of measures authorized by Congress, and carried out under the direction of the heads of departments, would be defeated if such were not the case. The efficiency of an act as a declaration of legislative will must, of course,

come from Congress, but the ascertainment of the contingency upon which the act shall take effect may be left to such agencies as it may designate. (*South Carolina v. Georgia*, 93 U. S. 13).”

So here, Congress has created a commission, under the direction of the Secretary of War and the supervision of the Chief of Engineers of the Army, to ascertain and determine whether the various hydraulic mines within the territory drained by the Sacramento and San Joaquin river systems can be operated by means of impounding reservoirs and other works without injury to those navigable waters; and if so, the act of Congress permits them to be operated in such a prescribed way as will prevent any such injury. Until the matters of fact committed to the commission have been ascertained and the extent and methods of the work so prescribed, the act of Congress prohibits the operation of any mine by the hydraulic process within the territory drained by the Sacramento and San Joaquin river systems from which any debris matter flows into those waters. This, in my opinion, is the true construction of the act, and to it, as thus construed, I see no constitutional objection. It is too late now for anyone to question the power on the part of Congress to declare that debris of any character, or other thing, constitutes an obstruction to the navigable waters within its control, and to prohibit the use of such waters by any such debris or other thing. The power to absolutely prevent the use of such waters for the objectionable purposes, necessarily includes the power to prescribe the

terms and conditions upon which they may be so used. The provision of section 10 of the act, requiring the surrender to the United States of the right to regulate the manner in which the debris resulting from the working of such mine or mines shall be restrained, and what amount shall be produced therefrom, only constitutes one of the conditions to such use required by Congress. As Congress already had that power of regulation, it needed no conveyance from the mine owner to vest it. For this reason, the insertion of that requirement by Congress as a condition to the granting of a permit to mine by the hydraulic process, does not render the act obnoxious to any of the objections urged against it.

A decree will be entered for the complainant as prayed for.

(Signed)

ROSS,

Circuit Judge.

[Endorsed]: Opinion. Filed June 8, 1897. W. J. Costigan, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

IN EQUITY.

THE UNITED STATES,

Complainant,

vs.

THE NORTH BLOOMFIELD GRAVEL
MINING COMPANY (a Corporation)

Respondent.

No. 12,086.

Petition for Order Allowing Appeal and Suspension of Injunction During Pendency of Appeal.

The respondent herein, the North Bloomfield Gravel Mining Company, feeling itself aggrieved by the order made by said court in said cause, sustaining the complainant's demurrer to the respondent's answer to the bill of complaint, and the decretal order thereupon made, decreeing that a perpetual injunction issue against the said respondent, and by the final decree rendered and entered in said cause, now comes by C. W. Cross, Esq., its solicitor, and petitions the said Court for an order allowing said respondent to prosecute an appeal from said orders and decree, to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, under and according to

the laws of Congress and the statutes of the United States in such case made and provided, and also that an order be made, fixing the amount of security which respondent shall give and furnish upon such appeal. And the respondent further humbly petitions that an order be made, suspending the injunction by the final decree in said cause, during the pendency of the said appeal, such suspension to be granted upon such terms, as to bond or otherwise, as may be considered proper by the Honorable Justice of said court, who decided said cause. And your petitioner will ever pray, etc.

C. W. CROSS,

Solicitor for the said Respondent, The North Bloomfield
Gravel Mining Co.

[Endorsed]: Filed June 22, 1897. W. J. Costigan,
Clerk. W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

IN EQUITY.

THE UNITED STATES,

Complainant,

vs.

THE NORTH BLOOMFIELD GRAVEL

MINING COMPANY (a Corporation),

Respondent.

No. 12,086.

Assignment of Errors.

The respondent in the above-entitled action hereby assigns the following errors:

1. The Court erred in sustaining the demurrer to the respondent's answer to the bill of complaint in said cause, to which order the respondent duly excepts, and the making of said order by said Court is hereby assigned as error.

2. The Court erred in ordering that a judgment and decree be entered in favor of the said complainant and against the said respondent, upon the pleadings in said cause, and without a trial of the issues thereby made, and the said order of the Court is hereby assigned as error.

3. The Court erred in rendering and entering a judgment and decree in favor of said complainant and against

the said respondent in said cause, and the same is hereby assigned as error.

C. W. CROSS,

Solicitor for the said Respondent.

[Endorsed]: Filed June 22, 1897. W. J. Costigan, Clerk.

By W. B. Beaizley, Deputy Clerk.

At a stated term ,to-wit, the March term, A. D. 1897, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the city and county of San Francisco, on Tuesday, the 22d day of June, in the year of our Lord, one thousand eight hundred and ninety-seven.

Present: Honorable ERSKINE M. ROSS, Circuit Judge.

THE UNITED STATES OF AMERICA,)

vs.)

NORTH BLOOMFIELD GRAVEL
MINING COMPANY.)

No. 12,086.

**Order .Allowing Appeal and}Suspending} Injunc-
tion.**

Upon motion of C. W. Cross, Esq., counsel for respondent, and upon the filing of a petition for an order allowing

an appeal, together with an assignment of errors herein, it is ordered that an appeal from the final decree filed and entered June 10, 1897, herein be, and hereby is, allowed to the United States Circuit Court of Appeals for the Ninth Circuit; that the amount of the bond on said appeal to be given by respondent be, and hereby is, fixed at the sum of \$500, and that a certified transcript of the record and all proceedings herein be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit.

Counsel for respondent then moved the Court that, under the provisions of rule 93 of the rules of practice prescribed for the courts of equity of the United States, the injunction awarded complainant in the final decree herein be suspended pending the appeal allowed herein. After hearing argument of said counsel, and of H. S. Foote, Esq., U. S. Attorney, opposing the motion on behalf of complainant, it was ordered, pursuant to the provisions of said Equity Rule 93, that said motion be, and hereby is, granted, and that the injunction awarded the complainant in the final decree herein be, and hereby is, suspended pending the determination of the appeal hereinabove allowed, or until the further order of the Court.

IN EQUITY.

*In the Circuit Court of the United States, in and for the
Ninth Circuit, Northern District of California.*

THE UNITED STATES,

Complainant,

vs.

THE NORTH BLOOMFIELD GRAVEL
MINING COMPANY (a Corporation),

Respondent.

No. 12,086.

Bond on Appeal.

Know All Men by These Presents, that we, the North Bloomfield Gravel Mining Company, a corporation, organized under the laws of the State of California, and having its principal place of business in the city and county of San Francisco, State of California, as principal, and A. Beral and H. Pichoir, as sureties, are held and firmly bound unto the United States of America in the full and just sum of five hundred dollars, to be paid to said the United States of America, or its attorneys, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 22d day of June, in the year of our Lord, one thousand eight hundred and ninety-seven.

Whereas, lately, at a session of the Circuit Court of the United States, for the Northern District of California, in a suit pending in said court, between the said the United States, complainant, and said the North Bloomfield Gravel Mining Company (a corporation), respondent, a decree was rendered against the said the North Bloomfield Gravel Mining Company, and the said the North Bloomfield Gravel Mining Company having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals, to reverse the decree in the aforesaid suit, and a citation directed to the said the United States of America is about to be issued, citing and admonishing the said the United States of America to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California—

Now, the condition of the above obligation is such, that if the said the North Bloomfield Gravel Mining Company shall prosecute its said appeal to effect, and shall answer all damages and costs that may be awarded against it, if it fails to make its answer in said action good, then the above obligation is to be void; otherwise to remain in full force and virtue.

[NORTH BLOOMFIELD GRAVEL MINING COMPANY.

[Corporate Seal of North Bloomfield
Gravel Mining Company.]

By H. PICHOR,

Secretary.

ANT. BOREL. [Seal]

H. PICHOR. [Seal]

United States of America,
 Northern District of California,
 City and County of San Francisco. } ss.

A. Borel and H. Pichoir, being duly sworn, each for himself, and not one for the other, deposes and says that he is a resident and householder in said Northern District of California, and is worth the sum of five hundred dollars, exclusive of property exempt from execution, and over and above all his debts and liabilities.

ANT. BOREL.

H. PICHOR.

Subscribed and sworn to before me this 22d day of June,
 A. D. 1897.

W. J. COSTIGAN,
 Commissioner and Clerk U. S. Circuit Court, Northern
 District of California.

The sufficiency of the sureties on the foregoing bond approved this 23d day of June, A. D. 1897.

ROSS,
 Circuit Judge.

[Endorsed]: Filed June 23, 1897. W. J. Costigan, Clerk.
 By W. B. Beazley, Deputy Clerk.

In the Circuit Court of the United States for the Ninth Judicial Circuit, Northern District of California.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

NORTH BLOOMFIELD GRAVEL
MINING COMPANY,

Respondent.

No. 12,086.

Clerk's Certificate to Transcript.

I, Southard Hoffman, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify the foregoing pages, numbered from 1 to 71, inclusive, to be a full, true, and correct copy of the record and proceedings in the above-entitled cause, and that the same together constitute the transcript of the record herein, upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$42.00, and that said amount was paid by North Bloomfield Gravel Mining Company, respondent and appellant.

an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable WILLIAM W. MORROW,
Judge of the United States Circuit Court, Ninth Circuit,
Northern District of California, this 24 day of September,
A. D. 1897.

WM. W. MORROW,
Judge.

Service of within citation and receipt of a copy thereof
is hereby admitted this 14th day of October, 1897.

SAMUEL KNIGHT,
Asst. U. S. Attorney for Appellee.

[Endorsed]: Citation. Filed October 14th, 1897. South-
ard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

[Endorsed]: No. 405. United States Circuit Court of Appeals for the Ninth Circuit. The North Bloomfield Gravel Mining Company, a Corporation, Appellant, vs. The United States of America, Appellee. Transcript of Record. Upon appeal from the United States Circuit Court of the Ninth Judicial Circuit, in and for the Northern District of California.

Filed Oct. 21, 1897.

F. D. MONCKTON,

Clerk.